REMARKS

Claims 68-92 are pending in the subject application. Claims 68, 79, 83, 93, 99, 111, 116, and 129 are amended. Applicants submit that the amendments introduce no new matter, support therefore being found throughout the application and drawings as originally filed (e.g. see [0045] of the published application 2004-0133155). Favorable reconsideration in light of the amendments are remarks which follow a respectfully requested.

I. 35 U.S.C. 102 Rejections

Rosenman et al.

Claims 68-91, 111-116, 121-127, and 129 are rejected under 35 U.S.C. §102(e) over U.S. Patent No. 6,478,776 to Rosenman et al. (hereinafter "Rosenman"). Applicants respectfully traverse.

Rosenman describes a catheter systems for delivering drug delivery structures into the myocardium. According to Rosenman, the drug delivery structure 12 is helical in shape and is implanted within the myocardium so that it is disposed completely within the myocardium with the proximal tip 38 of the structure 12 is at a depth below the endocardial surface 44 (see Figs. 16 and 17). As specified by Rosenman, this placement is important because it allows the endocardium to heal over the small helical needle track wound created by turning the device into the tissue such that, eventually, the healing response within the myocardium will seal the drug delivery structure off from the circulating blood within the heart chamber (indicated at item 45). (See e.g. col. 10, line 62-col. 11, line 9; col. 14, line 62-col. 15, line 8).

Rosenman does not teach or suggest an implantable device having a cap element sized to prevent the cap element from passing through the incision in which the device is inserted, wherein the cap element abuts the incision or mates against the patient eye outer surface when the device is implanted, as recited in independent claims 68, 79, 111, and 116. Rosenman also does not teach or suggest an implantable device having a cap element sized to prevent the cap element from passing through the incision in which the device is inserted, wherein the cap element is in contact with the coil-shaped body member, as recited in independent claim 129.

Rosenman also does not teach or suggest a method for treating a patient by inserting into a patient through an incision a delivery device comprising a non-linear shaped body member having a cap element at the proximal end and inserting into a patient through an incision the device such that the body member resides in the patient and the cap element remains outside the incision and abuts the incision to stabilize the device, as recited in independent claim 83.

Accordingly, Applicants submit that claims 68, 79, 83, 111, 116, and 129 are patentable over Rosenman. Claims 69-78, 80-82, 84-91, 112-115, and 117-128 depend from claims 68, 79, 83, 111, 116, and 129 and, likewise are patentable over Rosenman. Reconsideration and withdrawal of the rejections is respectfully requested.

Darougar et al

Claims 93-97, 99-107, 109, 118, 120-121, 126-127, and 129 are rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,395,618 to Darougar et al. (hereinafter "Darougar"). Applicants respectfully traverse.

Darougar describes an ocular insert for positioning in the upper or lower fornix of the conjunctiva such that is bends along the curvature of the eye within the fornix (see e.g. col. 3, lines 19-26, 54-56; Figs. 5 and 6). The insert is positioned in the fornix under the eyelid, such that it is situated between the lid and the globe (see col. 9, lines 13-53). Thus, Darougar's device and methods are such that the device is not provided within the eye through an incision but, rather, it is positioned outside of the eye between the globe and the eyelid.

Darouger at least does not teach or suggest a method of inserting a device into a patient eye through an incision, wherein the body member of the device resides in the patient/in the patient's eye and a cap element remains outside the incision and abuts the incision, as recited in independent claims 93, 99, and 129.

Accordingly, Applicants submit that claims 93, 99, and 129 are patentable over Darougar. Claims 94-97, 100-107, 109, 118, 120, 121, and 126-127 depend from claims 93, 99, and 129 and, likewise are patentable over Darougar. Reconsideration and withdrawal of the rejections is respectfully requested.

Altman et al.

Claims 68-91, 111-116, 121-127, and 129 are rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,551,427 to Altman et al. (hereinafter "Altman"). Applicants respectfully traverse.

Altman describes implants for elimination of arrhythmogenic sites from the myocardium. As set out by Altman, the head 54 facilitates insertion (col. 10, lines 7-8). As shown by Figs. 7-11, the device, when in the shape of a helix 46, is provided with a linear extension at its proximal end that connects the helix 46 to the head 54.

However, Altman does not teach or suggest an implantable device having a cap element that abuts the incision or mates against the patient eye outer surface when the device is implanted, as recited in independent claims 68, 79, 111, and 116 (see Fig. 11 which depicts the device of Altman implanted in the myocardium). Altman also does not teach or suggest an implantable device having a cap element in contact with the coil-shaped body member, as recited in independent claim 129. Rather, Altman's head 54 is in contact with a linear extension at the proximal end of the helix 46.

Altman also does not teach or suggest a method for treating a patient by inserting into a patient through an incision an implantation device such that the body member resides in the patient and the cap element remains outside the incision and abuts the incision to stabilize the device, as recited in independent claim 83.

Accordingly, Applicants submit that claims 68, 79, 83, 111, 116, and 129 are patentable over Rosenman. Claims 69-78, 80-82, 84-91, 112-115, and 117-127 depend from claims 68, 79,

83, 111, 116, and 129 and, likewise are patentable over Altman. Reconsideration and withdrawal of the rejections is respectfully requested.

Richter et al.

Claims 68-71, 74-78, 83-86, 90-92, 99-102, 104, 106-110, 116-121, and 128-129 are rejected under 35 U.S.C. §102(b) over U.S. Patent No.5,868,697. Applicants respectfully traverse.

Richter describes an implant 30/130/230 comprising a needle-like tube 32/132 (see e.g. col. 5, lines 63-64; Figs. 2, 3, 11, and 16) having a cylindrical tube passage 38 (see e.g. col. 5, lines 21-24). The tube 32/132 can have one or more projections in the form of one or more spurs, flanges, or retention plates 52/158/252 (see e.g. col. 5, lines 61-66; col. 7, line 57 - col. 8, line 3; col. 8, lines 48-57; Figs. 2, 3, 11, and 16).

However, Richter does not teach or suggest a non-linear shaped body member having at least two deviations from a linear path. Rather, as set forth above, Richter's implant comprises a tube having a liner shape. While the linear shaped tube can include projections, these projections do not change the overall linear shape of the tube. Accordingly, it is respectfully submitted that Richter at least does not teach or suggest an implantable drug delivery device comprising a non-linear shaped body member having at least two deviations from a linear path and that has a shape other than a substantially C-configuration, as recited in independent claims 68, 83, 99, and 116. Further, Richter at least does not teach or suggest an implantable drug delivery device comprising a coil-shaped body member, as recited in independent claim 129.

As such, claims 68, 83, 99, 116, and 129 are patentable over Richter. Claims 69-71, 74-78, 84-86, 90-92, 100-102, 104, 106-110, 115-121, and 128 depend from claims 68, 83, 99, 116, and 129 and, likewise are patentable over Richter. Reconsideration and withdrawal of the rejections is respectfully requested.

2. 35 U.S.C. §103 Rejections

Rosenman et al. and Johnson et al.

Claim 92 is rejected under 35 U.S.C. §103(a) over Rosenman and U.S. Patent No. 5,972,027 to Johnson (hereinafter "Johnson"). Applicants respectfully traverse.

As set forth above, Rosenman does not teach or suggest a method for treating a patient by inserting into a patient through an incision a delivery device comprising a non-linear shaped body member having a cap element at the proximal end and inserting into a patient through an incision the device such that the body member resides in the patient and the cap element remains outside the incision and abuts the incision to stabilize the device, as recited in independent claim 83.

Johnson does not remedy these deficiencies. Johnson describes a porous stent for maintaining the patency of body passages (see e.g. col. 1, lines 4-16). Such stents are placed intraluminally within a body passage such as a blood vessel, gastrointestinal tract, ureteral tracts, bronchial and esophageal tracts.

Thus, claim 83 is patentable over Rosenman and Johnson. Claim 92 depends from claim 83 and, likewise is patentable over Rosenman and Johnson. Reconsideration and withdrawal of the rejection is respectfully requested

Darouger et al. and Johnson et al.

Claim 98 is rejected under 35 U.S.C. §103(a) over Darouger and Johnson. Applicants respectfully traverse.

As set forth above, Darouger at least does not teach or suggest a method of inserting a device into a patient eye through an incision, wherein the body member of the device resides in the patient/in the patient's eye and a cap element remains outside the incision and abuts the incision, as recited in independent claim 93.

Johnson does not remedy these deficiencies. As set forth above, Johnson describes a porous stent for maintaining the patency of body passages (see e.g. col. 1, lines 4-16). Such stents are placed intraluminally within a body passage such as a blood vessel, gastrointestinal tract, ureteral tracts, bronchial and esophageal tracts.

Accordingly, claim 93 is patentable over Darouger and Johnson. Claim 98 depends from claim 93 and likewise is patentable over Darouger and Johnson. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, applicants request reconsideration and allowance of claims --.

It is believed that no fees are required for consideration of this response. However, if for any reason the fee paid is inadequate or credit is owed for any excess fee paid, the Office is hereby authorized and requested to charge Deposit Account No. **04-1105**.

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Respectfully submitted,

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